271(c)(1)(A)."[16] It would be difficult to conclude that a carrier "seeks to provide" service if it is not taking reasonable steps to do so. Moreover, such a conclusion would not be warranted unless the requesting carrier intends to provide such service within a specified and reasonable time frame, against which the carrier's reasonable steps may be evaluated. Absent requirements of this kind, a BOC's ability to use Track B could be foreclosed indefinitely by the inaction of its competitors, contrary to the purpose of Track B.[17]

As noted above, there is very little evidence before the Commission at this time on which to evaluate DeltaCom's intentions and efforts to provide residential service. Nor is there any evidence on these issues in the state proceedings. The SCPSC refused to consider whether BellSouth was eligible to proceed under Track A or Track B, concluding that such questions "should be deferred to the FCC, since Federal law is involved in this issue."[18] In a subsequent order addressing BellSouth's compliance with section 271, the SCPSC offered a "Review of Competition in South Carolina" in which it concluded that "none of BST's potential competitors are taking any reasonable steps towards implementing any business plan for facilities-based local competition for business and residential customers in South Carolina."[19] However, this

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[16] Oklahoma Order ¶ 27.

[17] Oklahoma Order ¶¶ 54-56.

[18] Public Service Commission of South Carolina, In re Entry of BellSouth Telecommunications, Inc. into InterLATA Toll Market, Order Denying Petition For Rehearing or Reconsideration, Docket No. 97-101-C, Order No. 97-575, at 1 (July 7, 1997), attached to this Evaluation as Exhibit 4.

[19] SCPSC Order at 19.

conclusion is of limited value in assessing whether DeltaCom submitted a "qualifying request" since the SCPSC did not expressly address Track B issues[20] and because DeltaCom's statements concerning its plans to provide business and residential service in South Carolina were not in the record before the SCPSC. Moreover, since these issues were not considered in the state proceedings, DeltaCom's statements concerning its plans to provide residential service were first made available to BellSouth when DeltaCom submitted its affidavit in this proceeding. Thus, the record available to the Department at this time does not include any response from BellSouth to this affidavit.[21]

Because the present record on this critical issue is so sparse, the Department is unable to determine whether DeltaCom has submitted a "qualifying request," and therefore whether BellSouth is foreclosed from applying under Track B. The Commission will be in a better

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[20] The SCPSC's conclusion is also of limited value in assessing whether AT&T or MCI have submitted "qualifying requests" since the SCPSC does not indicate, in reaching its conclusion, whether it regarded competitors which used unbundled network elements obtained from BellSouth to be using their "own" facilities. The FCC decided that unbundled elements obtained from a BOC would be regarded as a competing carrier's own facilities for purposes of assessing Track A and Track B issues after the SCPSC Order. See In re Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, Memorandum Opinion and Order, CC Docket No. 97-137, FCC 97-298, ¶ 101 ("Michigan Order").

[21] Because evidence that has been submitted to the FCC but not to the relevant state commission does not give the Department an opportunity to assess other parties' responses to that evidence and is not subject to cross-examination, as is often the case in state commission proceedings, such evidence often will be less persuasive to the Department than evidence which was first presented to the state commission. Because of the important role of state commissions in the section 271 process, we strongly encourage all interested parties to participate fully in state 271 proceedings, and urge the Commission to take any appropriate steps to encourage such participation.

position to assess this issue after receiving Reply Comments from BellSouth and other parties, which may provide additional information on this important issue.

B. The Requirements for a Track A Application Have Not Been Satisfied

BellSouth asserts in the alternative that it may be eligible to apply under Track A, which requires a demonstration that the BOC "is providing access and interconnection," pursuant to binding agreements approved under section 252, to "one or more unaffiliated competing providers of telephone exchange service ... to residential and business subscribers." Moreover, the competing providers must be providing local exchange service "exclusively" or "predominantly over their own telephone exchange service facilities."[22]

BellSouth acknowledges that it is unaware of any facilities-based providers that would satisfy the requirements of Track A but asks the Commission to conduct an inquiry into the status of such competition in South Carolina. There is no evidence in BellSouth's application -- or elsewhere in the record -- of the existence of such an operational provider in South Carolina at this time. Therefore, the requirements of Track A have not been satisfied.

II. BellSouth Has Failed to Demonstrate That It Is Offering Access and Interconnection That Satisfy the Checklist Requirements

Even if the Commission concludes that BellSouth may proceed under Track B, it should deny this application. BellSouth has not demonstrated that it is offering access and interconnection that satisfy critical requirements of the competitive checklist that are needed to

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[22] 47 U.S.C. §271(c)(1)(A).

fully open South Carolina's markets to competition.[23]

A. BellSouth Must Demonstrate That Each Checklist Item Is Legally and Practically Available to Competitors

Under Track B, as well as under Track A, an applicant is required to show that each checklist item is available both as a legal matter and as a practical matter.[24] These requirements are clearly suggested by the statutory reference to "statements of generally available terms." This language indicates that checklist items must be *generally* offered to all interested carriers, be genuinely *available*, and be offered at concrete *terms*. A mere paper promise to provide a checklist item, or an invitation to negotiate, would not be a sufficient basis for the Commission to conclude that a BOC "is generally offering" all checklist items.[25] Nor would such paper promises provide any basis for the Department to conclude that the market had been fully opened to competition. Even in Track B states, where there has been no request for access and

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[23] We express no view as to BellSouth's compliance or non-compliance with checklist requirements that are not specifically addressed in this Evaluation.

[24] Although we disagree with BellSouth's assertion that it has satisfied this standard in South Carolina, we do not understand BellSouth to disagree that this is the standard it is legally obligated to meet. See, e.g., BellSouth Brief at 17 (all checklist items are "ready and waiting"); 19 (checklist items are available today); 33 (checklist satisfied by virtue of "legally binding offerings of its Statement and BellSouth's extensive, successful efforts to make the required items available in practice").

[25] The Commission has previously decided that the statutory distinction between "providing" (under Track A) and "offering" (under Track B) does not suggest a distinction in the meaning of those terms, but reflects merely the distinction between situations where a BOC "furnishes or makes . . . available pursuant to state-approved interconnection agreements" and situations where the BOC "makes . . . available pursuant to a statement of generally available terms." Michigan Order ¶ 114.

interconnection to a facilities-based provider seeking to provide residential service, the legal and practical availability of all checklist items will be important to competition, since competitors may need such access and interconnection in the future, as well as to compete now to provide resale service, and service of all kinds to business customers.[26]

B. The FCC May Rely on the Conclusions of State Commissions and the Department of Justice in Making Its Determinations

In making determinations regarding checklist compliance, the Commission of course must consider the evidence presented by the applicant and other parties. In addition, the 1996 Act requires that, before making any determination under section 271(d), the Commission shall consult with the commission of the state that is the subject of the application "in order to verify the [BOC's] compliance" with the checklist requirements. 47 U.S.C. §271(d)(2)(B). It also requires the Commission to consult with the Attorney General, and to give "substantial weight" to the Attorney General's evaluation of an application. 47 U.S.C. §271(d)(2)(A). Notwithstanding these consultation requirements, under the plain language of the 1996 Act, *the Commission* must determine checklist compliance; it "shall not approve . . . an application . . . unless *it* finds"[27] checklist compliance, in addition to compliance with section 272 requirements and the public

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[26] The importance in general of ensuring that the necessary arrangements for local competition are in place before section 271 entry has been granted underscores the importance of scrutinizing an SGAT carefully to ensure that all significant issues are clearly resolved before a BOC can receive section 271 entry under Track B, because, post-entry, a BOC would clearly have an increased incentive to delay compliance by prolonging both (1) negotiations with competitors, and (2) the implementation of any necessary measures that would enable competition to take root. See, e.g., Schwartz Aff. at ¶¶ 9-24, 155-156, 180-190.

[27] 47 U.S.C. §271(d)(3) (emphasis added).

interest standard.

While the Commission must make its own findings on all section 271 issues, a state commission's evaluation of BOC compliance with the checklist may provide valuable assistance to the Commission in the section 271 process. Indeed, to the extent the state commission (1) has applied the proper legal standards, consistent with the 1996 Act and any applicable Commission regulations, and (2) has made reasoned decisions based on an adequate record, the Commission may properly rely on a state commission's conclusion as a basis for its own determinations concerning checklist compliance.

The Commission also may rely on the conclusions of the Department of Justice as a basis for its own determinations. However, the role of the Department differs from that of the state commissions in three respects. First, a state commission may limit its assessment of checklist compliance to evidence of conditions within its state. However, some checklist determinations -- such as determinations on OSS issues, where each of the BOCs generally has deployed a single region-wide system -- may as a practical matter require determinations that affect states throughout a BOC's entire region. In considering such issues, the Commission may confront situations in which one state concludes that a BOC's OSS arrangements comply with the checklist, while another state examining the same arrangements finds checklist deficiencies. The Department will apply a uniform standard for all states in a BOC's region, and a uniform standard that applies to all BOCs. Second, the 1996 Act requires the Commission to consult with states only on issues of checklist compliance; the obligation to consult with the Department is not

limited in this manner. Third, the 1996 Act does not require the Commission to give special weight to state commission views, but requires the Commission to give "substantial weight" to the evaluation of the Attorney General.

C. BellSouth Has Not Demonstrated That It Is Providing Access to Network Elements in a Manner That Allows Requesting Carriers to Combine Them

Section 251(c)(3) requires incumbent LECs to provide unbundled network elements "in a manner that allows requesting carriers to combine such elements in order to provide ... telecommunications service." BellSouth has failed to show that it is offering or providing access to unbundled elements in accordance with this requirement.[28] Its interconnection agreements and its SGAT fail to state adequately the terms and conditions under which BellSouth will provide unbundled elements so that they may be combined, and BellSouth has also failed to demonstrate that it has the practical ability to provide unbundled elements to requesting carriers with satisfactory performance in commercial quantities.

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[28] 47 U.S.C. §271(c)(2)(B)(ii) sets forth the general requirement that the BOC's access and interconnection agreements or statement of terms include "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." In addition, the competitive checklist specifically requires the provision of "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services" (47 U.S.C. §271(c)(2)(B)(iv)), "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services" (47 U.S.C. §271(c)(2)(B)(v)), "[l]ocal switching unbundled from transport, local loop transmission, or other services" (47 U.S.C. §271(c)(2)(B)(vi)), and "[n]ondiscriminatory access to databases and associated signaling necessary for call routing and completion" (47 U.S.C. §271(c)(2)(B)(x)).

1. The SCPSC Has Made No Specific Findings as to Whether BellSouth Is Offering Unbundled Network Elements in a Manner That Allows Them to Be Combined

In Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997) ("Iowa Utilities Board"), the Eighth Circuit upheld many of the Commission's regulations defining and mandating access to unbundled network elements, and rejected many of the arguments against those regulations that would have limited the ability of competing carriers to use combinations of network elements.

The Court held that the Commission properly defined network elements to include more than the "physical components of an incumbent LEC's network that are directly involved in transmitting a phone call from one person to another," specifically noting that elements could include "the technology and information used to facilitate ordering, billing, and maintenance of phone service," even if some of those elements might also be characterized as "services." Id. at 808.

The Court also held that "a competing carrier may obtain the ability to provide telecommunications services entirely through an incumbent LEC's unbundled elements." Id. at 814 (emphasis added). It therefore rejected the arguments of incumbent LECs that competing carriers should be required to use facilities of their own, in addition to whatever unbundled elements they obtained from incumbents, to offer "finished services." Id.

The Court, however, invalidated the Commission's rules which required incumbents to combine network elements at the request of competing carriers, id. at 813, and, in the order on rehearing, section 51.315(b) of the Commission's rules, which prohibited the separation of

existing combinations of elements. Iowa Utilities Board v. FCC, No. 96-3321, Order On Petitions For Rehearing, 1997 WL 658718, at *2 (8th Cir. Oct. 14, 1997). In doing so, however, it recognized the explicit statutory requirement that unbundled elements be provided in a manner that allows requesting carriers to combine such elements, noting that "the fact that the incumbent LECs object to this rule indicates to us that they would rather allow entrants access to their networks than have to rebundle the unbundled elements for them." Iowa Utilities Board, 120 F.3d at 813.

Prior to the Iowa Utilities Board decision, BellSouth and the SCPSC had taken the position that new entrants could not order unbundled network elements which when combined would permit them to offer services duplicating BellSouth's retail services. BellSouth's initial South Carolina SGAT and interconnection agreements provided that BellSouth would provision and bill requests for combinations of network elements as resale orders. Because this initial SGAT did not permit competitors to combine network elements to provide finished services, there was no basis for presenting evidence -- either in the hearings leading up to the approval of the initial SGAT or in the SCPSC arbitration proceedings -- concerning the manner in which BellSouth would provide separated network elements so that entrants could combine them, or whether BellSouth had the practical ability to do so.

After the Iowa Utilities Board decision, BellSouth submitted and the SCPSC approved a revised South Carolina SGAT on which BellSouth relies for this section 271 application. No additional hearings were held on this revised SGAT, and the SCPSC order approving the revised

SGAT contains no discussion or specific findings that its provisions would allow requesting carriers to combine network elements in a reasonable and nondiscriminatory manner. BellSouth addresses the provision of unbundled elements in a manner that permits them to be combined in section II.F. of this revised SGAT, which states:

> CLEC-Combined Network Elements
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> 1. CLEC Combination of Network Elements. CLECs may combine BellSouth network elements in any manner to provide telecommunications services. BellSouth will physically deliver unbundled network elements where reasonably possible, e.g., unbundled loops to CLEC collocation spaces, as part of the network element offering at no additional charge. Additional services desired by CLECs to assist in their combining or operating BellSouth unbundled network elements are available as negotiated.
>
> 2. Software Modifications. Software modifications, e.g., switch translations, necessary for the proper functioning of CLEC-combined BellSouth unbundled network elements are provided as part of the network element offering at no additional charge. Additional software modifications requested by CLECs for new features or services may be obtained through the bona fide request process.[29]

As we explain below, this offering does not satisfy the checklist requirements regarding unbundled elements.

2. BellSouth Has Not Demonstrated That It Is Offering Unbundled Elements in a Manner That Would Permit Requesting Carriers to Combine Them to Provide Telecommunications Services

BellSouth's South Carolina revised SGAT is legally insufficient, because it fails to describe whether or how BellSouth will provide unbundled elements in a manner that will allow

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[29] South Carolina Public Service Commission, BellSouth Telecommunications, Inc.'s Statement of Generally Available Terms and Conditions, In the Matter of Entry of BellSouth Telecommunications, Inc. into InterLATA Toll Market, Docket No. 97-101-C, at II.F (Sept. 19, 1997) ("BellSouth SC Revised SGAT"), attached to BellSouth Brief as Appendix B-Volume 1, Tab 1.

them to be combined by requesting carriers. First, the SGAT does not adequately specify *what* BellSouth will provide, the *method* in which it will be provided, or the *terms* on which it will be provided, and therefore there is no basis for a finding that BellSouth is offering "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" as the checklist requires.[30] Second, BellSouth's application does not demonstrate that it has the practical capability to provide unbundled elements in a manner that would permit competing carriers to combine them.

a. BellSouth's SGAT Fails to Set Forth the Necessary Terms and Conditions to Enable Competitors to Combine Unbundled Network Elements

BellSouth's SGAT states that it "will physically deliver unbundled elements where reasonably possible . . . as part of the network element offering at no additional charge." BellSouth SC Revised SGAT, at II.F.1. This provision, however, is completely unclear as to which elements are included in this offering. As Iowa Utilities Board recognized, certain unbundled network element -- such as operations support systems -- may be intangible and physically integrated into the telephone network. 120 F.3d at 808-809. For such network elements, as well as certain physical elements such as transport and signaling, it may be claimed that it is not reasonably possible to provide access on a physically-separated basis. Nonetheless, BellSouth's SGAT fails to specify exactly which elements fall into this category. With respect to these unspecified elements, BellSouth fails to describe how they will be delivered, and whether it

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[30] 47 U.S.C. §271(c)(2)(B)(ii).

intends to impose some additional charge, or whether it will simply not provide the capability for CLECs to combine those elements.

BellSouth's South Carolina Revised SGAT states that BellSouth will perform, at no additional charge, software modifications that are "necessary" for the "proper functioning" of CLEC-combined elements, but it does not identify what translations are available under this provision or what the procedures are for obtaining these translations. BellSouth SC Revised SGAT at II.F.2.

Even more fundamentally, the BellSouth South Carolina Revised SGAT does not even specify what combinations of network elements it proposes to separate and require the CLEC to combine, a defect that will make it exceedingly difficult for a CLEC to plan for the use of such elements. Even CLECs that plan to use some facilities of their own will need to purchase some "sets" of facilities and functionalities, and if it is not known whether they will be provided as a single element or in several pieces, it would not be possible for new entrants to plan their business. Moreover, this SGAT does not state what charges, if any, would be levied by BellSouth to modify existing elements so that they may be combined.

While the BellSouth South Carolina Revised SGAT appears to acknowledge the need for methods and procedures for providing unbundled elements in a manner that would allow them to be combined, the critical details are unspecified, and appear to be left largely as subjects for future negotiation. This approach, in our view, is inconsistent with BellSouth's obligation to offer

specific and legally binding commitments with respect to its offering of unbundled elements.

This lack of clarity also precludes a finding that BellSouth is offering "nondiscriminatory" access to unbundled elements at the statutorily-required prices, as required by the checklist. For example, at least with respect to some combinations, it appears from the BellSouth South Carolina Revised SGAT that instead of providing requesting carriers with supervised access to its network to allow them to do the work of combining the BellSouth network elements, BellSouth would require a new entrant to collocate its own facilities in a central office in order to combine these elements.[31] In many cases, however, it would appear to be far less costly to allow CLECs to obtain supervised access to BellSouth's network so that they may perform the work of combining elements in a manner that would enable them to provide telecommunications services "entirely" with unbundled elements obtained from an incumbent, without contributing any facilities of their own.[32]

In the absence of any record concerning the costs or practical implementation issues

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[31] The only specific description in the SGAT that arguably addresses arrangements by which a competing carrier may combine unbundled elements specifies that BellSouth may deliver unbundled loops to CLEC collocation spaces. BellSouth SC Revised SGAT, at II.B.6.

[32] For example, unbundled loops and switching might be combined simply by connecting the loop from the customer's premises to the port of the local switch at the main distribution frame. It would appear that BellSouth could permit requesting carriers to have supervised access to its network to perform this simple operation without any substantial additional investment. A requirement that requesting carriers invest in additional collocation facilities in order to combine these elements might unnecessarily add costs to the provision of telecommunications services. The Department has reached no conclusions as to the requirements needed to ensure that unbundled elements may be combined. Our point is simply that BellSouth has not addressed these issues sufficiently, thereby precluding any finding that its offering is sufficient to satisfy this statutory requirement.

relating to alternative methods of providing unbundled elements so that they may be combined -- indeed in the absence of any clear indication of how BellSouth itself proposes to fulfill this statutory requirement -- we do not believe that BellSouth has demonstrated compliance with the checklist.

b. BellSouth Has Failed to Establish That It Is Operationally Ready to Provide Unbundled Network Elements in a Manner That Allows Requesting Carriers to Combine Them to Provide Telecommunications Services

BellSouth also must show that it has the practical capability of providing unbundled elements in a manner that permits them to be combined. At least some methods of meeting this requirement would appear to require the development and testing of new capabilities. In terms of implementing any arrangements necessary to combine elements, we would look to see how BellSouth would perform any additional functions necessary to allow elements to be combined by a CLEC. As it is not even clear what those practices will be, BellSouth has not yet demonstrated that it possesses the technical capability to satisfy this requirement in a reliable, commercially acceptable manner. Thus, for all the reasons stated above, BellSouth has not satisfied its burden of showing that it has the practical ability to provide these elements as required by the checklist.

c. If Competing Carriers Cannot Combine Unbundled Network Elements, Then Efficient Entry Would Be Seriously Impeded

BellSouth's failure to establish that it will offer unbundled elements in a manner that will allow other carriers to combine them to offer telecommunications services has substantial implications for the development of competition in South Carolina. The 1996 Act establishes a

legal right for competing carriers to combine unbundled network elements and to provide services entirely through the use of unbundled network elements, and the Commission repeatedly has emphasized the importance of that right for competition in local exchange and access markets.[33] However, the decision in Iowa Utilities Board to vacate rule 51.315(b) has created great uncertainty about the manner in which unbundled elements will be provided to CLECs, and in turn, the costs that CLECs will incur in combining them in order to provide services.

The resolution of these issues, of course, may be enormously important to promoting efficient competitive entry. The most economically efficient means for CLECs to serve a large segment of customers in the foreseeable future may be through the use of combinations of unbundled elements, whether a CLEC uses only combinations of elements purchased from incumbent LECs, or uses such elements in conjunction with network elements of its own. If appropriate means can be found to ensure that elements are provided in a manner that allows CLECs to combine them without large expenditures, alternative providers of local services may be able to serve many consumers using unbundled elements. Conversely, if unbundled elements are provided in a manner that requires CLECs to incur large costs in order to combine them, many customers -- especially residential customers -- may not have any facilities-based competitive alternative for local service for a considerably longer period of time.

In light of the substantial competitive implications of this issue, we believe that a BOC should be required to clearly articulate the manner in which it proposes to offer unbundled

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[33] 47 U.S.C. § 251(c)(3); Michigan Order ¶¶ 332-33.

elements so that they may be combined and demonstrate that it has the practical ability to process orders and provision them in that manner. Moreover, in the absence of a more complete record on which to evaluate the issue, we are particularly concerned about proposals to relegate these issues to a bona fide request procedure, as BellSouth proposes in this application. Such a procedure may be both necessary and desirable for dealing with a variety of access and interconnection issues involving new services or unusual circumstances, but the bona fide request process sometimes may serve only to create additional opportunities for delay and litigation. It should not serve as a substitute for demonstrating the availability of basic checklist requirements.

The implication in BellSouth's South Carolina revised SGAT that it will require CLECs to establish collocation facilities in order to combine elements also has important competitive ramifications. Such a requirement would entail substantial cost and delay for CLECs wishing to use combinations of elements.[34]

In short, BellSouth's failure to show checklist compliance in this area should not be regarded as a mere technicality. Rather, that failure carries with it a substantial threat to the viability of competition using unbundled network elements, one of the key entry vehicles established by the 1996 Act.

D. BellSouth's Wholesale Support Processes Are Deficient

Efficient wholesale support processes -- those manual and electronic processes, including

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[34] For example, DeltaCom, the only CLEC pursuing physical collocation in South Carolina, states that it will have taken more than a year to negotiate and implement its collocation arrangement. Moses Aff. ¶ 19.

access to OSS functions, that provide competing carriers with meaningful access to resale services, unbundled elements, and other items required by section 251 and the checklist of section 271 -- are of critical importance in opening local markets to competition. As explained in the Michigan Order, the Commission employs a two-part standard in evaluating checklist compliance with respect to OSS access. Michigan Order ¶ 136.

First, it will consider "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them." Id. As to the *functionality* of those systems, the Commission determined that "[f]or those functions that the BOC itself accesses electronically, the BOC must provide equivalent electronic access for competing carriers" and that "the BOC must ensure that its operations support systems are designed to accommodate both current demand and projected demand of competing carriers for access to OSS functions." Id. ¶ 137. As to the *support* of those systems, the Commission made particularly detailed determinations:

> A BOC ... is obligated to provide competing carriers with the specifications necessary to instruct competing carriers on how to modify or design their systems in a manner that will enable them to communicate with the BOC's legacy systems and any interfaces utilized by the BOC for such access. The BOC must provide competing carriers with all of the information necessary to format and process their electronic requests so that these requests flow through the interfaces, the transmission links, and into the legacy systems as quickly and efficiently as possible. In addition, the BOC must disclose to competing carriers any internal "business rules," including information concerning the ordering codes [including universal service ordering codes ("USOCs") and field identifiers

> ("FIDs")] that a BOC uses that competing carriers need to place orders through the system efficiently.

Id. (footnotes omitted).

Second, the Commission will consider "whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter." Id. ¶ 136. Here, "the Commission will examine operational evidence to determine whether the OSS functions provided by the BOC to competing carriers are actually handling current demand and will be able to handle reasonably foreseeable demand volumes." Id. ¶ 138. The Commission has stated that the "most probative evidence" of operational readiness is actual commercial usage and that carrier-to-carrier testing, independent third-party testing, and internal testing, while they can provide valuable evidence, "are less reliable indicators of actual performance than commercial usage." Id.

The Commission's OSS standards reflect the fact that entrants relying on unbundled network elements or resale will also be dependent on incumbents' provision of efficient and reliable operations support systems. An aggregation of "minor" OSS problems may, collectively, place entrants at a substantial competitive disadvantage to BellSouth, because they would prevent those entrants -- regardless of their own efforts -- from marketing and providing services with the same degree of efficiency, reliability, and quality offered by BellSouth.

When the Commission evaluates OSS issues prior to the "stress testing" provided by actual commercial use at competitively significant volumes, it must make difficult predictive judgments about the likely commercial significance of an applicant's failure to provide OSS functionality that is identical or precisely comparable to the functionality available for the

applicant's own use. Actual commercial use may indicate in some cases that isolated limitations in OSS offerings will not materially impact competition. For that reason, we do not believe that the Commission should require "perfection" in OSS offerings as a condition of section 271 approval. However, when evidence from commercial use at competitively significant volumes is unavailable, as is the case here, the Commission should continue to examine carefully all concerns about the adequacy of OSS offerings. It is precisely because these complex issues are so difficult to evaluate, and because of their substantial competitive impact, that the Commission should insist that potentially significant OSS problems be resolved *before* the BOCs enter the interLATA market. Regulatory solutions in this area will be exceedingly difficult if the BOCs themselves have no incentives to resolve these problems.[35]

BellSouth's present application falls well short of satisfying the standards articulated by the FCC. Although BellSouth has devoted substantial resources to the development and implementation of the requisite systems, much additional work remains to be done. As to the current interfaces offered by BellSouth for pre-ordering and ordering functions, we conclude that BellSouth has failed to demonstrate that they will allow for effective competition, and BellSouth's ongoing efforts to address our concerns on this score are still incomplete. The record indicates numerous complaints from CLECs that they have not yet been able to obtain sufficient information from BellSouth to permit them to complete the development of their own OSSs.

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[35] See Schwartz Aff. ¶¶ 126-140, 154-157, 179-182; and Supplemental Affidavit of Marius Schwartz on Behalf of United States Department of Justice ¶¶ 35-43 ("Schwartz Supp. Aff."), attached to this Evaluation as Exhibit 2.

BellSouth's systems have experienced little commercial use, but that limited experience suggests potentially serious system inadequacies that have not yet been fully addressed. Moreover, the limited capacity of key systems suggests that performance problems are likely to be far more serious when competitors begin to order unbundled elements or resale services in competitively significant volumes. As explained in Appendix A, attached to this Evaluation and in the Friduss South Carolina Affidavit, attached to this Evaluation as Exhibit 3, BellSouth's failure to institute all of the necessary wholesale performance measurements,[36] prevents a determination that BellSouth is currently in compliance with checklist requirements or that compliance can be assured in the future.

In concluding that BellSouth has failed to comply with the checklist requirements governing OSS, we are mindful of the SCPSC's contrary conclusion. That conclusion was reached, however, before the Commission provided its detailed decision on OSS issues in the Michigan Order. Indeed, other state commissions in the BellSouth region, including the Alabama and Georgia commissions and the staff of the Florida commission, have expressed serious concerns about the adequacy of BellSouth's systems in the wake of the Commission's Michigan Order.[37]

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[36] Affidavit of Michael J. Friduss - South Carolina ¶¶ 77-78 ("Friduss SC Aff."), attached to this Evaluation as Exhibit 3.

[37] See Alabama Public Service Commission, In re Petition for Approval for a Statement of Generally Available Terms and Conditions Pursuant to §252(f) of the Telecommunications Act of 1996 and Notification of Intention to File to Petition for In-Region, InterLATA Authority with the FCC Pursuant to §271 of the Telecommunications Act of 1996, Docket 25835, Order (Oct. 16, 1997) ("Alabama Order"); Florida Public Service Commission, In

Although BellSouth's OSS fails to satisfy checklist requirements, we are encouraged by some aspects of BellSouth's OSS efforts, particularly by BellSouth's work with an independent software vendor to develop an inexpensive, PC-compatible software package that is compatible with BellSouth's EDI interface.[38] BellSouth states that it undertook this work "[t]o assist CLECs of all sizes that want to use EDI without extensive development effort on their side of the EDI interface" and that the software "is readily available to even the small CLEC." Id. The Department supports this approach, which can benefit both CLECs and BOCs by making multiple alternatives available to CLECs while requiring the BOC to support only a single interface on its end. Moreover, such software has the potential, if combined with integrated support for an application-to-application pre-ordering interface, to provide even the smallest CLEC with an integrated pre-ordering/ordering environment such as that presently used by BellSouth's retail representatives.

In Appendix A to this Evaluation, we explain in greater detail numerous concerns about BellSouth's performance and capabilities in providing access to OSS, as well as its deficiencies in reporting wholesale performance. In short, based on the record in this application, we cannot conclude that BellSouth has demonstrated that it satisfies the checklist requirements relating to its

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re Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996, Docket No. 960786-TL, Staff Recommendation (Oct. 22, 1997) ("FPSC Staff Recommendation"); "Telephony," Communications Daily, Oct. 30, 1997 ("GAPSC Article").

[38] Affidavit of William N. Stacy, Checklist Compliance (Operations Support Systems) ¶ 53 ("Stacy OSS Aff."), attached to BellSouth's Brief as Appendix A-Volume 4a, Tab 12.

operations support systems.

III. The South Carolina Market Is Not Fully and Irreversibly Open to Competition

The 1996 Act requires the Commission to consult with the Attorney General on all applications under section 271, and authorizes the Attorney General to provide an evaluation of such applications "using any standard the Attorney General considers appropriate."[39] The 1996 Act does not limit the Department's evaluation to any of the specific findings that the Commission is required to make, under section 271(d)(3), before approving an application. Indeed, it does not limit the evaluation to those findings, collectively, though of course the evaluation may be relevant to any or all of those findings. In any event, the Commission is required to accord "substantial weight" to the Department's evaluation.

The Department has concluded that it should evaluate section 271 applications under a standard that requires an applicant to show that the markets in a state have been fully and irreversibly opened to competition. A detailed explanation of that standard, and the reasons the Department has adopted it, is provided in the attached Affidavit and Supplemental Affidavit of Dr. Marius Schwartz, and in previous evaluations submitted by the Department.[40]

In the absence of broad-based commercial entry using the three entry paths contemplated by the 1996 Act, the Department will closely examine competitive conditions in a state, to determine whether significant barriers to competition have been removed, and whether there are

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[39] 47 U.S.C. §271(d)(2)(A).

[40] See DOJ Oklahoma Evaluation at 36-51; DOJ Michigan Evaluation at 29-31.

objective criteria to ensure that competing carriers receive appropriate access to essential inputs, even after an application under section 271 has been approved. Under this standard, BellSouth has not shown that the market in South Carolina is fully and irreversibly open to competition, and its application should be denied.

A. The Minimal Level of Competition in South Carolina Does Not Provide Evidence That Local Markets Are Fully and Irreversibly Open

At this time, BellSouth faces no significant competition in local exchange services in South Carolina. The competitive situation in South Carolina is reviewed in more detail in Appendix B to this Evaluation. We are not aware of any operational facilities-based local exchange competitor at the present time. As of September 11, 1997, only 573 residential lines and 1785 business lines had been resold in the entire state.[41] Of the 573 resold residential lines identified in BellSouth's application, over 90% were resold by a single company, which has only a resale arrangement with BellSouth, and, therefore, would presently be unable to provide facilities-based competition. The resale of lines to business is only slightly more robust and diverse. Eleven companies are reselling at least a single business line, though three companies account for approximately 98% of BellSouth's 1785 resold lines.

Despite the limited operations today of competitors, a substantial number of companies have expressed an interest in providing local services in the state. As of the date of BellSouth's application, 83 telecommunications carriers had executed agreements with BellSouth, and sixteen companies had been certified to provide competing local telephone service in South Carolina.

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[41] Wright Aff. ¶ 24.

Seven of those companies -- ACSI, AT&T, DeltaCom, Hart Communications, Intermedia, KMC Telecom, and MCI -- have approved interconnection agreements for services other than resale. Two companies -- ACSI and DeltaCom -- are moving towards the provision of facilities-based local service.

ACSI currently provides non-switched dedicated services, including special access, data services, and private line services, over its own fiber optic facilities in Columbia, Charleston, Greenville, and Spartanburg. ACSI plans to have an operational switch in Greenville during in the first quarter of 1998, which it will use to serve business customers. ACSI is currently providing resold services to a small number of business customers in South Carolina. ACSI has not yet purchased UNEs from BellSouth, but plans to do so when its switch is operational.

As noted in Part I, DeltaCom has indicated that it plans to provide facilities-based local exchange services, and has been moving towards fulfilling that plan.[42] It plans to do so either through the use of a network entirely owned by DeltaCom or through the partial use of BellSouth facilities.[43]

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[42] Moses Aff. ¶ 22.

[43] AT&T and MCI have expressed their intention to provide local exchange services to both residential and business customers in the state using either unbundled network elements or resale. AT&T requested unbundled network elements from BellSouth in March 1996 and interconnection in June 1996 to provide local exchange services via resale, unbundled network elements, and on a facilities basis in South Carolina. A final arbitrated agreement between AT&T and BellSouth was approved on June 20, 1997; AT&T objected to several of the agreement's provisions and filed an appeal with the U.S. District Court of South Carolina on July 18, 1997. AT&T has not begun to provide any local telecommunication services in South Carolina, according to AT&T, because of BellSouth's OSS inadequacies, the lack of cost-based pricing for combined unbundled network elements, and the very low wholesale discount rate.

Given the current minimal level of competition in South Carolina, despite the apparent interest in entering South Carolina by a significant number of competitors, there is no reason to presume that the market is fully open to competition. Therefore, we examine competitive conditions more carefully to see whether any significant barriers continue to impede the growth of competition in South Carolina.

B. Substantial Barriers to Resale Competition and Competition Using Unbundled Elements Remain in Place in South Carolina

As noted above, only two companies, ACSI and DeltaCom, appear to be making substantial efforts at this time to construct new telecommunications networks in South Carolina. These companies, when they become fully operational, may provide important competitive alternatives for consumers, but overall, investment in new facilities appears to have been relatively less attractive to CLECs in South Carolina than in some other states, a fact that may well reflect the demographic and economic characteristics of the state.

The limited investment in new facilities means that for the immediately foreseeable future, competition to serve the large majority of South Carolina consumers -- most residential customers and customers of all kinds outside of the largest urban areas of the state -- can occur only through resale or the use of unbundled network elements. Competitors seeking to use those two entry vehicles will be critically dependent on BellSouth.

MCI has only recently entered the South Carolina market. MCI's interconnection agreement, based in part on the terms obtained by AT&T in its arbitration order, contemplates the purchase of unbundled network elements from BellSouth. According to MCI, plans to provide local exchange service in South Carolina are not progressing because of the lack of adequate OSS and the inability of BellSouth to provision unbundled network elements.